

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC. and
COXCOM, LLC,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

**COX'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION *IN LIMINE* NO. 7 TO PRECLUDE PLAINTIFFS FROM RELYING ON
COPYRIGHT NOTICES AS PROOF OF DIRECT INFRINGEMENT**

Plaintiffs agree with Cox that notices of copyright infringement are merely allegations of infringement and are insufficient, without more, to make a *prima facie* case of direct infringement. See ECF No. 539, Opp. at 30. Plaintiffs' *only* basis for opposing Cox's motion *in limine* to preclude them from relying on these notices as proof of direct infringement or referring to them in any way that implies that they prove that Cox's subscribers infringed the works in suit is to argue that this would be more appropriate as a jury instruction—to which they might consent. Opp. at 30 ("The Court has separate processes for motions *in limine* and jury instructions. It may be that Plaintiffs consent to a similar instruction, but Plaintiffs believe jury instructions are best addressed as a whole.").

Given that the parties *agree* here as to the impropriety of referring to notices as proof of direct infringement, there is no reason why Plaintiffs or their witnesses should argue or testify to the contrary, and, hence, no reason not to grant Cox's motion. Plaintiffs have provided no reason why dealing with this issue now would be "inefficient and potentially problematic." Opp. at 30. To the contrary, what would be "inefficient and problematic" would be a trial in which Plaintiffs and their witnesses were allowed to treat the notices as evidence of infringement and the Court is left to un-ring this bell with a jury instruction. Cox's motion *in limine* should be granted.

Dated: November 6, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 6, 2019, a copy of the foregoing was filed electronically with the Clerk of Court using the ECF system, which will send notifications to ECF participants.

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